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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE RIVAS,

Defendant and Appellant.

B210371

(Los Angeles County
Super. Ct. No. BA339462)

APPEAL from a judgment of the Superior Court of Los Angeles County, Craig E. Veals, Judge. Affirmed.

Alan Stern, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Kenneth C. Byrne, Supervising Deputy Attorney General, Tasha G. Timbadia, Deputy Attorney General, for Plaintiff and Respondent.

After the trial court denied defendant's Penal Code section 1538.5¹ motion to suppress evidence obtained from a search of his bedroom, Jose Rivas entered a plea of no contest to one count of possession of a firearm in violation of Penal Code section 12021, subdivision (e). Rivas contends that the trial court incorrectly denied his motion to suppress evidence. He argues that consent to search was the product of improper coercion by police and probation officers because a large number of officers were on the premises and they allegedly had their guns drawn when consent to search was procured. Because the trial court's factual findings with respect to the validity of the search were supported by substantial evidence, we affirm.

BACKGROUND

Rivas was charged with possession of a firearm under Penal Code section 12021, subdivision (e) (count 1), possession of an assault weapon under Penal Code section 12280, subdivision (b) (count 2), and possession of ammunition under Penal Code section 12316, subdivision (b)(1) (count 3). Rivas filed a motion pursuant to Penal Code section 1538.5 to suppress evidence obtained by the police during the search of his residence.

At the hearing on the motion to suppress, the prosecution called Los Angeles Police Department Officer Isaac Lowe as its sole witness. Lowe testified as follows: On March 28, 2008, he and his partner responded to a radio call to assist probation officers who were attempting to conduct a probation search of Joaquin Rodriguez at his father Jose Rodriguez's residence. (For clarity and meaning no disrespect, we refer to Jose Rodriguez as "Rodriguez" and Joaquin Rodriguez as "Joaquin.") Rodriguez is also Rivas's father-in-law. Joaquin's conditions of probation included a search condition and there was an outstanding warrant for his arrest.

¹ Penal Code section 1538.5, subdivision (a)(1) states in pertinent part: "A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure on either of the following grounds: [¶] (A) The search or seizure without a warrant was unreasonable."

There were numerous probation officers on the scene. At least one officer was talking to Rodriguez, who was the sole tenant on the lease of the residence. Rodriguez gave oral consent to search the entire premises, including the detached garage, where Rivas lived.

Lowe approached Rivas, who was standing on the driveway. Lowe asked Rivas if he lived at the residence, and Rivas stated that he lived in the garage. Lowe then asked, "Is anyone inside there?" Rivas answered, "Nah, no one is inside there," and spontaneously added, "Well, you know, you guys are going to check the residence. I'll be honest with you, I've got some rifles in there. Guys [*sic*] can go ahead and check." Rivas also admitted the rifles were unregistered.

Lowe did not have his gun drawn when he arrived at the scene or while Rivas gave him consent to search, but the probation officers had their guns drawn. The probation officers' guns were drawn at the very beginning of the incident and after the search they put their guns away.

The officers then obtained written consent to search the house and garage from Rodriguez, who told the officers that he had access to the entire property. The officers searched the garage and immediately observed a rifle just inside the door. The officers also found ammunition, "expended magazines," burglary tools, another rifle, a satchel, and a shotgun in the garage. Rivas was arrested.

Rodriguez testified during the suppression hearing with the assistance of an interpreter as follows: He was talking with Rivas in the front yard when the police officers arrived at his home, "using a loud voice and pointing their handguns" at him. There were two officers in uniform and two in plain clothes. They approached Rodriguez with guns drawn and asked for Joaquin, and he told them that Joaquin was not home. One of the officers asked who lived in the garage, and Rodriguez responded that his daughter and Rivas lived there. After Rodriguez gave oral consent to search, three officers searched the main part of his home. The officers were pointing guns at him when he consented to the search.

Rivas testified as follows: On the day of his arrest, he was in the back of the house with his sister, her boyfriend, and a friend when they were approached by Probation Officer Thomas. With his gun drawn, Officer Thomas commanded, “Don’t move,” and asked, “Where’s Joaquin?” Rivas answered, “He’s not here.” Thomas identified himself as “probation” and was wearing a green bulletproof vest and non-uniform pants. Rivas was surrounded and felt he was not free to leave. With his gun still drawn, Thomas began “searching the back of the house and . . . started walking to the side of the house.” Thomas, with his gun drawn, escorted Rivas toward the front of the house. While they were walking, Thomas asked, “Who[se] .22 rifle is it?” Rivas answered, “It’s mine.” The rifle had been in the garage. Up to that point, Rivas had not seen Thomas inside the garage or seen him leaving it, but Thomas said he had been in the garage.

Rivas repeatedly stated, “You need permission to go in my room.” He also said, “Who gave you permission to go in my room?” After Thomas exited the garage, he instructed the other officers to handcuff Rivas. He then asked Rivas, “What else do you have in there?” Before Rivas answered, Thomas added, “I’m going to search anyways.” Rivas then admitted that he had another .22 rifle and a 12 gauge shotgun inside his room in the garage.

The trial court denied Rivas’s suppression motion, stating, “[T]his is purely a credibility call. The thing is that there was testimony on the part of the officers that they went to the location, that they made contact with the defendant prior to the search, and he made some statement to the effect, ‘I know you are going to search anyway, go ahead and search.’ . . . [¶] In any event, I am left with a record that I think competently I can conclude that there was, in fact, consent that was given, if not by Mr. Rodriguez, to the extent that it justified the search of the overall premises, because he was in ostensible control of it, then certainly by the defendant. I do accept the testimony of the officers that the defendant did, in fact, give consent to search the garage area, which he purported he was in control of. So I am going to deny the motion.”

The trial court did not make a holding that Rodriguez's consent was purely voluntary. The court stated, "[T]he testimony of Mr. Rodriguez . . . he was all over the place in every respect. . . . It was almost to the point where it was unintelligible. I took from it overall that he did admit that he gave consent, but that he was nervous and thereby the implication was presented that it wasn't a knowing and intelligent consent, it wasn't purely voluntary."

Later that day, Rivas pleaded no contest to possession of a firearm in violation of Penal Code section 12021, subdivision (e). Counts two and three were dismissed pursuant to the plea agreement. Rivas was placed on formal probation for three years. Rivas appeals.

DISCUSSION

Rivas argues that the trial court erroneously denied his motion to suppress because his consent to search was the product of improper coercion and that any evidence discovered during the search should be suppressed. We disagree because under the totality of the circumstances we conclude that substantial evidence supports the trial court's finding that Rivas's consent to search was voluntary.

I. Standard of Review

A proceeding under a Penal Code section 1538.5 motion to suppress evidence is a full hearing on the issues before the superior court sitting as the fact finder. (*People v. Superior Court (Peck)* (1974) 10 Cal.3d 645, 649.) The trial court must "'judge credibility of witnesses, resolve conflicts in testimony, weigh evidence and draw factual inferences.'" (*People v. James* (1977) 19 Cal.3d 99, 107 (*James*).) On appeal, the trial court's findings must be upheld if supported by substantial evidence. (*Ibid.*) Thus, absent credible evidence indicating that consent was obtained through coercion or intimidation, the search must be upheld. (See *People v. Schoennauer* (1980) 103 Cal.App.3d 398, 409.)

II. Consent to Search

The Fourth Amendment to the United States Constitution protects individuals against unreasonable search and seizure. It preserves "[t]he right of the people to be

secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” (U.S. Const., 4th Amend.) It is well settled that ““the Fourth Amendment has drawn a firm line at the entrance to the house. . . .” [Citations.]” (*People v. Superior Court (Walker)* (2006) 143 Cal.App.4th 1183, 1198 (*Walker*).)

Consent is an exception to the Fourth Amendment’s proscription against warrantless searches. (*Walker, supra*, 143 Cal.App.4th at p. 1198.) The state must establish by substantial evidence that consent was ““freely and voluntarily given”” and ““uncontaminated by any duress or coercion, actual or implied.”” (*People v. McKelvy* (1972) 23 Cal.App.3d 1027, 1033.) Voluntariness is a question of fact to be determined from the totality of the circumstances. (*People v. Avalos* (1996) 47 Cal.App.4th 1569, 1578–1579.) No single factor is dispositive. (*Ibid.*) All presumptions favor the proper exercise of the trial court’s power to judge the credibility of witnesses, resolve conflicts, weigh evidence, and draw factual inferences. (*James, supra*, 19 Cal.3d at p. 107.) But mere acquiescence to a claim of authority will not suffice to establish voluntary consent. (*McKelvy, supra*, 23 Cal.App.3d at p. 1033.)

In this case, Rivas claims that his consent was coerced, in part, because the probation officers had their guns drawn.

Substantial evidence supports the trial court’s implied finding that any display of guns was insufficient to vitiate Rivas’s spontaneous and apparently voluntary consent. Officer Lowe testified that while the probation officers had their guns drawn during the incident, he did not have his gun drawn at any time. The probation officers’ display of drawn guns did not in and of itself invalidate Rivas’s consent. (*People v. Ratliff* (1986) 41 Cal.3d 675, 686 [rejecting the idea that “consent to search is invalid solely because the officers originally drew their guns when confronting defendant”].) Although consent to search given in response to a request by an armed officer whose gun is drawn is suspect, evidence of the drawn gun is not itself sufficient to establish that consent was the product of coercion. (*People v. Challoner* (1982) 136 Cal.App.3d 779, 782.)

Rivas also maintains that consent to search was vitiated by the presence of a large number of police and probation officers and because he was under the impression that he

had no choice but to consent to the search and implicate himself in the criminal possession of weapons. But officer domination does not necessarily vitiate consent. (*People v. Ibarra* (1980) 114 Cal.App.3d 60, 65.) The trial court implicitly found that Rivas did not harbor such beliefs, and its finding was supported by substantial evidence. Although there were many officers at the scene, there were also several residents and guests. Some of the probation officers were searching for Joaquin, while others spoke to Rodriguez. Lowe, who at no time displayed his gun, struck up a conversation with Rivas during which Rivas spontaneously volunteered information about the rifles and gave consent to a search without Lowe's having requested it. Under the totality of the circumstances, we conclude that substantial evidence supports the trial court's finding that Rivas's consent to search was voluntary, not the product of intimidation or coercion. Thus, the trial court did not err by denying the motion to suppress.

DISPOSITION

The judgment is affirmed.

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MALLANO, P. J.

We concur:

ROTHSCHILD, J.

CHANEY, J.